

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,166,553 to Fraterrigo.

Fraterrigo shows a bottle for cosmetics of medication as seen in Figs. 1 and 3, having a neck 11, a self sealing valve 17, a front and rear panels 10 and 5 respectively, two narrow side panels where the maximum width of the front panel is at least twice the width of the side panel, an upper and a lower section with the upper section having rounded shoulders and the lower section having tapered walls.

In reference to claim 10, the container of Fraterrigo performs the method steps claimed, see column 3, lines 1-7.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,166,553 to Fraterrigo in view of US 5,542,585 to Peters et al.

Fraterrigo disclosed all the claimed features as discussed above except for the front and rear panels being bowed outwardly and having the lower region taller than the upper region. Peters shows a container as seen in Fig. 1, having a body 10 with bowed outwardly front and back panels and a lower section taller than an upper section. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the shape of the container of Fraterrigo to include bowed outwardly front and back panels and a lower section taller than an upper section as taught by Peters to make the container fit comfortable on a person's hand and make the container ergonomic and easy to handle.

Response to Arguments

5. Applicant's arguments filed December 28, 2007 have been fully considered but they are not persuasive. In response to applicant's argument that the container of Fraterrigo does not disclose a bottle containing medicine, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In addition, many cosmetic products are considered medication, and the container of Fraterrigo is used to dispense cosmetics. In response to applicant's argument that the container of Fraterrigo does not disclose a flexible bottle, the teat is part of the container and the teat front and back panels need to be squeezed to produce flow of liquid.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754